

**Exhibit BB**

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7

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 In re )

) Case No. 09-30452 DM  
(Chapter 7)

12 FERMIN SOLIS ANIEL and )  
13 ERLINDA ABIBAS ANIEL, )

**TRUSTEE'S RESPONSE TO  
MOTION TO COMPEL TRUSTEE  
TO ABANDON DEBTORS'  
PROPERTIES**

14 Debtors. )  
15 )  
16 )  
17 )

Date: November 12, 2010  
Time: 10:00 a.m.  
San Francisco Courtroom 22  
Hon. Dennis Montali

18 Janina M. Elder, Trustee in Bankruptcy of the Estate of Fermin Solis Aniel and Erlinda  
19 Abibas Aniel ("Trustee"), hereby files her Response to the Debtors' *Motion to Compel Trustee to*  
20 *Abandon Debtors' Properties* ("Motion to Compel").  
21

**I. LEGAL STANDARD FOR ABANDONMENT OF ESTATE PROPERTIES**  
22 **PURSUANT TO 11 U.S.C. § 554 OF THE BANKRUPTCY CODE**  
23

24 Section 554(b) of the Bankruptcy Code provides, in pertinent part, that "on request of a  
25 party in interest and after notice and a hearing, the court may order the trustee to abandon any  
26 property of the estate that is burdensome to the estate or that is of inconsequential value and

1 benefit to the estate.” *Id.* (emphasis supplied). Courts in this circuit have determined that  
2 abandonment pursuant to Section 554 is proper only when the party seeking abandonment can  
3 establish that the property at issue is indeed burdensome, or of inconsequential value and benefit  
4 to the estate. *See, e.g., In re Viet Vu*, 245 B.R. 644, 647 (9th Cir. BAP 2000); *In re Sullivan &*  
5 *Lodge, Inc.*, 2003 U.S. Dist. LEXIS 14616, \*11 (N.D. Cal. 2003). Notably, when the trustee  
6 does not oppose a motion to compel abandonment, the court must “focus . . . upon the reasons  
7 underlying the trustee’s determination and affirm a decision which reflects a business judgment  
8 made in good faith, upon a reasonable basis and within the scope of [her] authority under the  
9 Code.” *See Sullivan*, 2003 U.S. Dist. LEXIS 14616 at \*11, quoting *In re Wilson*, 94 B.R. 886,  
10 888 (Bankr. E.D. Va. 1989).

11 It is well-settled that abandonment of encumbered real property of the estate is proper  
12 where equity remaining in such property, if any, is of inconsequential value and benefit to the  
13 estate. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004)(granting debtors’ motion to  
14 compel trustee’s abandonment of debtors’ residence where residence was exempt and equity was  
15 of inconsequential value to the estate); *see also In re Nelson*, 251 B.R. 857 (8th Cir. BAP  
16 2000)(trustee compelled to abandon real properties where, among other things, trustee admitted  
17 that debtors had no equity in the properties and sale would not generate any benefit for the  
18 estate).

19 Furthermore, courts have recognized a trustee’s authority to abandon causes of action  
20 which have inconsequential value to the estate. *See In re Yack*, 2009 Bankr. LEXIS 4554, at \*20  
21 (9th Cir. BAP 2009); *In re Moore*, 110 B.R. 924, 927 (Bankr. C.D. Cal. 1990)(noting that the  
22 trustee must determine, in her sound business judgment, what disposition is in the best interests  
23 of the estate.). As observed by the district court for the Northern District of California:

24 “Claims do not become valueless for section 554 purposes because a  
25 trustee declines to pursue them; rather, a trustee may decline to pursue a  
26 claim if that claim has no value . . . . Charged with the duty of maximizing  
the value of the estate, . . . a trustee may abandon a cause of action only  
when [she] deems its value to be less than the cost of asserting it.”

1 *Sullivan, supra*, at \*11-12 (internal citations omitted).

2 **A. The Trustee Does Not Oppose Abandonment of the Real Properties and**  
3 **Causes of Action Subject of the Motion to Compel Because Such Property Is**  
4 **of Inconsequential Value and Benefit to the Estate**

5 As set forth in the accompanying Declaration of Janina M. Elder, the Trustee's  
6 investigation into the assets of the estate leads the Trustee to conclude that the Debtors' real  
7 properties, and the causes of action which the Debtors assert against various "pretender lenders",  
8 hold little to no value for the estate.

9 The Court is well familiar with the background of this bankruptcy case. The Debtors,  
10 while vehemently disputing their secured creditors' standing to seek relief from the automatic  
11 stay to exercise their state court remedies, completely failed to save such properties from  
12 foreclosure by tendering post-petition adequate protection payments. Indeed, it is the Trustee's  
13 understanding and belief that the Debtors have failed to make any payments on the notes secured  
14 by the seven real properties disclosed in the amended schedules during the pendency of their  
15 bankruptcy case. Furthermore, based on the proofs of claim filed in this case, the Debtors also  
16 owe significant pre-petition arrears on these various secured notes. Given that the properties are  
17 all underwater, and the fact the Court has granted relief from the automatic stay with regard to  
18 five out of the seven properties at issue, the Trustee believes that these properties have  
19 inconsequential value and benefit to the Chapter 7 estate.

20 Likewise, the Trustee has thoroughly investigated the "pretender lender" litigation.  
21 While such litigation may have value to the Debtors (if only to ensure that they have their "day in  
22 court" to contest the lenders' standing to foreclose), the Trustee believes that the claims do not  
23 have enough value to the estate to justify the costs of litigation to pursue such claims.  
24 Particularly, in the *Aniel v. Aurora Loan Services, et al.* litigation (Case No. 10-1042), the district  
25 court already has dismissed all claims against defendants Mortgage Electronic Registration  
26 Systems, Inc. ("MERS") and Quality Loan Services Corp. ("Quality") with prejudice. While the

1 district court granted the Debtors leave to amend certain of their claims against remaining  
2 defendants Aurora and McCarthy and Holthus, LLP ("McCarthy"), both Aurora and McCarthy  
3 have filed motions to dismiss the Debtors' First Amended Complaint, which motions remain  
4 pending. Similarly, in the *Aniel v. Litton Loan Services, L.P., et al.* litigation (Case No. 10-  
5 0951), defendants Litton Loan Services and Quality have filed motions to dismiss; and the  
6 district court clerk declined to enter defendant MERS' default in that suit, so the Trustee  
7 anticipates that MERS likely will defend itself in that case, as it did in the *Aurora* litigation.

8 **CONCLUSION**

9 It is the Trustee's business judgment that the merits of the Debtors' "pretender lender"  
10 claims simply do not warrant the estate's expense of continued prosecution of those suits. For the  
11 reasons state above, it is also the Trustee's conclusion that the Debtors' real properties hold little  
12 to no value for the estate. In closing, the Trustee does not oppose the Debtors' Motion to  
13 Compel, and requests that the Court enter its order abandoning the estate's interests in these real  
14 properties and claims.

15  
16 Dated: October 29, 2010

17 Respectfully submitted,

18 MACCONAGHY & BARNIER, PLC

19  
20 /s/ Monique Jewett-Brewster  
21 Monique Jewett-Brewster  
22 *Attorneys for Janina M. Elder,*  
23 *Trustee in Bankruptcy*  
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